

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BRIAN E. McDERMOTT,

Plaintiff,

v.

6:11-CV-1057
(GTS/DEP)

JAMES CODY, Syracuse VAMC Director;
MARK ANTONELLI, Syracuse VAMC HR
Director; and LUCINDA WALTZ,
Syracuse VAMC Nurse Recruiter;

Defendants.

APPEARANCES:

OF COUNSEL:

BRIAN E. McDERMOTT
Plaintiff, *Pro Se*
P.O. Box 1944
Utica, New York 13501

HON. GLENN T. SUDDABY, United States District Judge

DECISION and ORDER

Currently before the Court in this civil rights action filed by Brian E. McDermott (“Plaintiff”) in September 2011 alleging that Defendants violated the Veterans Preference Act, 5 U.S.C. § 2108, by denying him a job interview despite being a veteran of the Vietnam War, is United States Magistrate Judge David E. Peebles’ Report-Recommendation dated December 6, 2011, recommending that Plaintiff’s Complaint be dismissed without prejudice pursuant to Fed. R. Civ. P.41(b) for failure to pay the Court’s filing fee or to submit a complete motion to proceed *in forma pauperis*. (Dkt. No. 5.) Plaintiff has not filed an Objection to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.)

Based upon a clear-error review of the filed papers this action, Magistrate Judge Peebles’ Report-Recommendation is accepted and adopted in its entirety for the reasons stated therein. (Dkt.

No. 5.) The Court would add only three points. First, Magistrate Judge Peeble's thorough and correct Report-Recommendation would survive even a *de novo* review. Second, the incomplete nature of Plaintiff's response to Question 2.b. his September 5, 2011, motion to proceed *in forma pauperis* in this action is conspicuous, given that in a September 5, 2011, motion to proceed *in forma pauperis* in another case in this District, he stated that his last date of employment was August 23, 2011, his salary being \$45,069 per year or \$726 per weekly pay period. *McDermott v. Cicconi*, 11-CV-1059, Plf.'s Motion to Proceed *In Forma Pauperis*, at ¶ 2.b (N.D.N.Y. filed Sept. 7, 2011). Third, while the Court does not base its decision to dismiss on the pleading sufficiency of Plaintiff's Complaint, the Court notes that (in addition to the fact that the Veterans Preference Act does not provide for a private right of action or a right that is enforceable under 42 U.S.C. § 1983) Plaintiff has alleged that, in his employment application to the Syracuse VAMC, he stated that, "[d]uring the past seven years . . . [he had] been convicted, imprisoned, on probation or parole, or forfeited collateral, or . . . [was currently] under charges for any offense against the law [other than a felony or any firearms or explosives offense]," plausibly suggesting that that fact may have been the cause of his failure to obtain a job interview. (Dkt. No. 1, at 6.)

ACCORDINGLY, it is

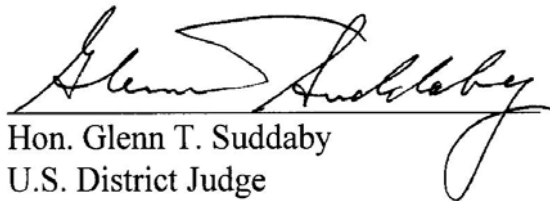
ORDERED that Magistrate Judge Peebles' Report-Recommendation (Dkt. No. 5) is

ACCEPTED and **ADOPTED** in its entirety; and it is further

ORDERED that Plaintiff's Complaint (Dkt. No. 1) is **DISMISSED** without prejudice.

The Clerk's Office is directed to close this action.

Dated: January 27, 2012
Syracuse, New York



Hon. Glenn T. Suddaby
U.S. District Judge